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HUMAN RIGHTS COMMITTEE

Fortieth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1035th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 8 November 1990, at 3 p.m.

Chairman: Mr. LALLAH

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1035/Add.1.

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The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of Morocco (continued) (CCPR/C/42/Add.10; M/CCPR/90/31/Rev.1)

1. The CHAIRMAN invited the Committee to continue its consideration of the second periodic report of Morocco, noting that it would unfortunately not be able to finish with it at the present session. He therefore proposed that after considering section VI of the list of issues, the Committee should move on to the other items on its agenda and leave the remainder of its consideration of the report of Morocco for its April session in New York or its July session.

2. Mr. ATMANI (Morocco), replying to a question on articles 231 and 225 of the Moroccan Criminal Code, mentioned in paragraphs 44 and 45 of the report, began by saying that magistrates ought not to be mentioned in article 231, as it was inconceivable, and in practice impossible, that a magistrate should use violence or cause violence to be used against persons in the exercise of his duties; no examining magistrate in Morocco had ever been known to use violence during the interrogation of an accused person. As for public officials and superintendents or other officers of the public authorities or the police, the Committee would remember that at the previous meeting it had been provided with a list of all persons in those categories who had been prosecuted for using violence in their dealings with accused persons.

3. Moroccan positive law ruled out any form of violence or torture, and any public official, superintendent or officer of the police who resorted to such methods did so on his own responsibility and would have to answer for it in court. It followed that any confessions obtained by such methods were invalid.

4. The wording of article 225 was taken from the Criminal Code of 1807, which was itself based on the Napoleonic Criminal Code. Loss of civil rights was very rarely applied as a punishment in Morocco. It had been used in 1956-1957 by a commission of inquiry specially set up to investigate the behaviour of certain senior State officials in connection with the abduction and deportation of King Mohammed V. That was the only case in which a commission of inquiry had decided that a number of persons should lose their civil rights. The punishment only meant that the person concerned was deprived of certain rights, such as the right to vote, the right to be elected, the right to be a minor's guardian, the right to be director of a company or chairman of a charitable organization. That punishment was imposed solely on people whose obvious unworthiness had been recognized by a court.

5. Anyone who was the victim of a violation could lodge a complaint with the King's Prosecutor at the level of the court of first instance, or with the King's Prosecutor-General at the level of the Appeal Court, and with the examining magistrate if that magistrate was dealing with his case, at the level of the court of first instance, or with the responsible magistrate of the Criminal or Correctional Chamber of the Court of Appeal. If the complaint was of a serious nature, it was referred to the Minister of Justice, who would then approach the authority responsible for the actions complained of.

6. Turning to the questions asked by Mrs. Chanet concerning an incommunicado detention centre in Tazmamert, he confirmed that he had spoken about the prison administration coming under the Ministry of Justice and had mentioned the existence of a central prison in Kenitra, three prison farms in different regions and a civil prison in each big town; he had not said anything about an incommunicado detention centre at Tazmamert. Since some international human rights organizations had reported the existence of such a centre, his delegation would ask the Government about the matter.

7. On the question of detention, the rule was that any detained person was released once he had served his sentence. That rule was followed in Morocco, where the serving of sentences was monitored by means of a central file at the prison administration headquarters in Rabat and a register kept at each prison. Detention began from the moment of arrest by police, i.e. from the first moment of being taken into custody.

8. With reference to the case of a Moroccan married to an American woman now in the United States, he confirmed that the man had been convicted in the affair of the royal Boeing. He was a soldier who at the time had been on duty in Kenitra. He had been sentenced to 20 years' imprisonment and would be released when he had served his sentence, if he was not pardoned by the King. The case was at present being considered by the King at the request of the United States Ambassador in Rabat among others.

9. As regards the "barbarous acts" referred to in article 399 of the Criminal Code, that expression was never used by the courts nowadays as a specific description of any act covered by the criminal law. It was in fact a term borrowed from French law which had become obsolete.

10. Replying to a comment by Mr. El Shafei, to the effect that article 7 of the Covenant was broader in scope than article 10 of the Moroccan Constitution, he remarked that it was impossible to go into everything in detail in a constitution and that furthermore in Morocco there was a tradition of humanism and there were laws specifying how the general principles stated in the Constitution were to be applied. Article 10 of the Constitution was thus only in the nature of a general indication; its implications were spelt out in the criminal law. As to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Morocco had signed but not yet ratified, it would probably be ratified in due course, since it was in no way contrary to the country's Constitution or traditions.

11. As far as the criminal procedure was concerned, he observed that, as in some European countries, the Code of Criminal Procedure provided for two phases: the preliminary inquiry, conducted by officers of the judicial police, during which the suspect was held in police custody and not permitted to contact a lawyer, and the pre-trial proceedings, conducted by an examining magistrate, at which time lawyers could be present during questioning. When the accused was questioned on his first appearance, he must be asked whether he was ready to answer questions put to him or not; otherwise the proceedings would be null and void. If he was willing, he was given a hearing; if not, he was questioned a second time in the presence of his lawyer; the presence of a lawyer was compulsory, and if he did not choose one himself, the examining magistrate appointed one on his behalf.

12. In reply to Mr. Prado Vallejo, who thought that Morocco had good legislation but that the practice left something to be desired and had stressed that if things were to be put right the behaviour of police officers would have to be changed, in particular by training, he said that there was a police college in Kenitra which trained officers for the judicial police. The training, which lasted two to three years, covered public law, private law and criminal law. The subjects taught included the role of international organizations, humanitarian law and human rights. Another college, for police commissioners, provided more thorough instruction in criminal law, and specifically in humanitarian law and human rights.

13. Mr. Prado Vallejo had also pointed out that in an inquiry the police tended to close ranks and did not denounce each other. That was something that was found all over the world. However, it did sometimes happen that policemen reported other policemen; the Moroccan Department of National Security accordingly had an Inspectorate General of Police manned by inspectors who were responsible for drawing up files on complaints lodged against police officers; the files often contained statements by other officers accusing the officer concerned.

14. With reference to the Standard Minimum Rules for the Treatment of Prisoners, he recognized that the number of prison establishments was inadequate, since their total capacity was only 7,000 for a prison population of 37,000. In its present economic circumstances, Morocco was not in a position to set about constructing enough prisons to house the prison population in accordance with the Standard Minimum Rules. Although there was great overcrowding in all the establishments, the Government did its best to provide proper food and care.

15. As regards the Dahirs of 11 April 1927 and 26 June 1930 mentioned in paragraph 54 of the report, he said that they dated back to the colonial period and were no longer applied in full. Thus such practices as putting some prisoners in fetters and imposing corporal punishment were no longer applied. The Ministry of Justice was preparing texts on the organization of the prison system which would take into account all the rules drawn up and adopted by international organizations in that field.

16. With regard to acts committed by officials in the course of their duties that were covered by the criminal law, he confirmed that officials did not enjoy immunity in such cases and that they could be prosecuted like anybody else. The Moroccan Criminal Code applied generally and did not protect anyone from punishment. It was incidentally the act that the Code punished, independently of the person who committed it. Whatever the terms of the Criminal Code, moreover, it was categorically forbidden to use violence against prisoners.

17. The question of the Oufkir family had been raised once again by a member of the Committee. While recognizing the right of any international, humanitarian or United Nations organization to take an interest in the matter, and even accepting the right of some States to give the Moroccan Government the benefit of their advice, he pointed out that the legal conditions for the detention of the Oufkir family were a matter for the King of Morocco. To talk about arbitrary detention would imply that the act had had no legal foundation

and had been committed solely for the purpose of doing them harm. The reasons for their imprisonment could only be gauged from a study of the whole affair and a precise knowledge of the circumstances leading to their arrest.

18. The laws dating from the colonial period were being revised in Morocco. The country's three human rights organizations had drawn up a sort of charter containing positive elements which would certainly be taken into account during the revision of all laws inherited from the Protectorate, which were now out of date or inadequate. Hardly a day passed without some legal text being issued to amend those old provisions. However, the task was sometimes beset with difficulties, particularly economic ones, and everything could not be dealt with from one day to the next. Since May 1990, the Ministry of Justice had been working solely on texts relating to human rights. It had established a consultative council for human rights, and had then set about drafting the provisions on administrative tribunals.

19. As regards the conditions in prisons, it should be noted that the insanitary prison at Laalou had now been closed and replaced by a more open and spacious prison, which was more in line with the minimum conditions. All the gaols built by the Protectorate authorities had been closed, together with insanitary establishments.

20. On the question of confessions, the Code of Criminal Procedure expressly stated the criminal court was required to base its findings on the proceedings at the hearing. Police reports were only a guide, and the courts had to weigh all the evidence in relation to the charges against the accused. The courts were composed of professional members of the judiciary, but also included lay assessors, who got to the bottom of the cases before them.

21. Mr. FODOR was glad to note that a dialogue had finally been established with the Moroccan delegation, to which he was grateful for answering to the question he had asked about article 231 of the Moroccan Criminal Code. He was however still bothered by the fact that the article, which referred to "any magistrate ... who, without lawful reason, commits or causes to be committed acts of violence against persons ..." was placed in the context of the prohibition of torture and might be interpreted as authorizing the use of force otherwise than in the case of police officers using force, for example, to prevent a suspect from escaping. He would therefore like to know in what precise circumstances a magistrate had "lawful reason" to cause acts of violence to be committed.

22. Mrs. HIGGINS said that she had been interested to hear the Moroccan delegation's explanations stressing the difference between systems based on Napoleonic law and common-law systems. Nevertheless, the Napoleonic system did not as far as she knew prevent a lawyer from being present before a person was brought before the examining magistrate. The possibility of communicating with a lawyer before being charged was in the Committee's view a guarantee for security of person.

23. She was relieved to learn that the prisons where conditions had been worst had been closed down. She would agree that a prison was not a hotel, but there were certain minimum standards that should be met. All States, whether developed or not, were required to comply with article 10 of the

Covenant, to which Morocco had not entered any reservations. The same applied to the observations made by the Moroccan delegation concerning the detention of the Oufkir family. While it was for the King to decide the legal conditions for their detention, he had freely decided to ratify the Covenant and ought therefore to respect the legal conditions in which, under the terms of the Covenant, an arrest could take place.

24. She had been glad to learn that further inquiries would be made into the alleged existence at Tazmamert of a detention centre not recognized by the Ministry of Justice. She would also like the detention centre of Derb Moulay Cherif to be investigated.

25. Mr. PRADO VALLEJO welcomed the fact that a dialogue had been started with the Moroccan delegation and hoped that it would continue when the Committee resumed consideration of the report.

26. The Moroccan representative had said that officials who committed a violation of human rights in the exercise of their official functions were answerable to the judicial authorities. He agreed that that was so, but would add that the State party was in turn answerable to the Committee, which it had to inform of the measures it had taken to prevent a recurrence of the violations of human rights. The Committee had learned that some officials had been dismissed, and he would like to know whether action of that type had been taken lately, as he had information indicating that violations of human rights had been committed recently.

27. Under Moroccan law, no one could be held in custody without trial for more than 96 hours. However, he knew of a decision given by a judge in 1979 to the effect that detention without trial could be prolonged as long as the judge thought necessary. That decision was particularly disturbing, since it was tantamount to authorizing unlimited detention without trial. It would also seem that in cases of offences affecting State security, the duration of detention without trial could be doubled. All those points called for further clarification.

28. The Moroccan delegation had referred at the previous meeting to cases in which policemen guilty of violations of human rights had been prosecuted. It did not seem to him, however, that all the cases reported had led to an inquiry, and he wondered whether that did not indicate something of a tolerant attitude towards acts of torture.

29. He had also learned that in police reports the date on which a person was taken into custody was sometimes changed so as to make people think he had not been detained any longer than was allowed by law. That would seem to be common practice in the police, and it might be that the higher authorities were not even aware of it. Perhaps the Moroccan Government would look into the matter.

30. Finally, he drew the Committee's attention to the case of a student who had been reported "missing" and who much later had been found to have been held incommunicado since 1983. He would like to hope that when the Committee resumed its consideration of the second periodic report, the Moroccan delegation would be able to provide information on the affair, which was particularly disturbing in that it was representative of a much wider problem.

31. Mr. WENNERGREN said that if he had asked for information on the Oufkir family, his reason had not been the Committee's consideration of the substance of individual cases, but his desire to find out what legal provisions had been applied, so as to check whether they were consistent with the Covenant.

32. He had taken due note of the Moroccan delegation's explanations about the trial procedure and the fact that the judge's finding must be based solely on the evidence and the court proceedings, police reports not being taken into account. It appeared however from article 231 of the Code of Criminal Procedure that the court could admit police reports, and was even required to do so. The question of the presumption of innocence was involved, and he would like to have an assurance that article 231 of the Code of Criminal Procedure did not involve a violation of that fundamental guarantee set forth in article 14, paragraph 2, of the Covenant.

33. Mrs. CHANET thanked the Moroccan delegation for taking due note of the Committee's concern about the conditions at Tazmamert prison and welcomed the favourable development in its attitude to the case of the Oufkir family. At the previous meeting the Moroccan delegation had in fact said that the case was an internal matter for Morocco in which there could be no external interference, whereas at the current meeting it had just recognized that a United Nations body could look into the matter under the terms of an international instrument. The information given to refute the charge that the detention of the family had been arbitrary was welcome. All the Committee wanted was to really know all the circumstances of the affair so that it could determine what the reasons for the detention were and what remedies the Oufkir family had.

34. Mr. ATMANI (Morocco), replying to the comments made about article 231 of the Criminal Code, explained once again that a magistrate could in no case use direct violence. The people who could use force, whether moral or physical, within the limits of their functions, were officers of the forces of law and order (police or gendarmerie). There were ways in which a suspect could be obliged to come to the police station to be questioned in custody or to appear before an examining magistrate. In cases of flagrante delicto, the accused was brought before the Prosecutor and then tried by an ordinary court at a public hearing.

35. On the question of lawyers, he said that Morocco followed the system of the informal preliminary inquiry, which had been adapted from the French model. But as soon as the suspect was brought before the examining magistrate, he was entitled to communicate with his lawyer and his family and, if he was ill, with a doctor. In addition, he was entitled to refuse to make a statement in the absence of a counsel of his choice from his first appearance before the examining magistrate. There were thus safeguards for persons accused of an offence under Moroccan procedure.

36. As regards the state of the prisons, the report showed that the Moroccan Government was aware of the deplorable state of the country's prisons. They were in poor condition and there were too few of them. But the authorities were determined to improve conditions for prisoners and to make prison life more humane. The only problem was Morocco's economic difficulties.

37. In answer to Mrs. Higgins's request with regard to the fate of the Oufkir family, he said he would refer the matter to the Moroccan Government. On the question of detention centres, the only information he could give the Committee was that Derb Moulay Cherif was not a detention centre, but simply a Casablanca police station with extended powers, which in any case did not go beyond holding people in custody.

38. Replying to Mr. Prado Vallejo's request for further information, he wished first of all to point out that Morocco was faced with the same economic, social and legal problems as most South American countries. He went on to say that any State official would without fail be made to answer before the courts for any ill-treatment or other acts covered by the criminal law. The State itself was answerable for its actions if other people suffered as a result, as the King had recently emphasized. Following the establishment of administrative tribunals, the State would now be called to account for its actions, at least under a procedure for financial compensation.

39. He wished to make it clear that violations of human rights were not commonplace in Morocco, as people claimed. Mistakes were made, and some reprehensible acts were even committed deliberately by State officials, but very heavy penalties had been imposed for some of those acts.

40. Detention incommunicado during a preliminary inquiry did not exist in Morocco. On being apprehended, a person was given a hearing by a judicial officer and informed of the charge against him. His family, on the other hand, was not informed where he was held, in order to prevent any interference with the inquiry, since the family might, for example, try to get rid of evidence if it knew of his detention. With reference to the judicial decision mentioned by Mr. Prado Vallejo, he was not sure that he had fully grasped the point, since there were only two cases in which detention without trial was authorized in Morocco: police custody and remand in custody.

41. In the case of offences punishable by deprivation of liberty, the normal duration of police custody under the Code of Criminal Procedure was 48 hours, the maximum being 72 hours. The King's Prosecutor ensured that those time-limits were observed, and police custody could not be extended to 72 hours without his written agreement.

42. As far as remand in custody was concerned, a distinction was made between two types of offences, those incurring penalties of less than two years' imprisonment and the rest. In the first case, the person could not be held for more than a month from the time of his first appearance before a magistrate, unless he was a previous offender. In other cases, the maximum duration of remand in custody was four months. It could only be prolonged by an order of the examining magistrate giving the specific reasons for the extension, which could not be for more than four months. The prisoner could appeal against the decision to remand him or keep him in custody. What was more, he could in all cases ask to be released on bail and appeal against any decision that went against him.

43. In those circumstances, the speaker did not see how, in the case mentioned by Mr. Prado Vallejo, a court could remand a person in custody indefinitely. He would therefore like to have more precise information on the case.

44. As regards the student who, according to members of the Committee, had been reported missing since 1983, he would refer the matter to the Moroccan Ministry of Justice.

45. In answer to a question asked by Mr. Wennergren, he said that in order to establish the guilt of the accused, the judges examined all the material in the file at the hearing. In addition, the accused always spoke last at the hearing, he was defended by one or more lawyers, the court heard witnesses for and against him, the evidence was produced before the judges and the accused was required to admit or deny the offence he was accused of. Finally, the finding was based on the inner conviction reached by the judges at the hearing.

46. As far as the use of records by the courts was concerned, they were not taken into consideration in serious criminal cases, but solely in those involving minor offences. The Code of Criminal Procedure stated that records or reports drawn up by officers of the judicial police and members of the gendarmerie on minor offences were accepted as authentic in the absence of proof to the contrary. Records were only valid evidence if they were in order from the procedural standpoint and if the author, acting in the performance of his duties, was reporting on a matter within his competence which he had personally seen or heard. Any other record or report was simply for purposes of information. In other words, in the case of minor offences, records or reports were accepted as valid until proved otherwise and in serious cases they merely served as a guide.

47. Finally, in answer to Mrs. Chanet's question concerning the fate of the Oufkir family, he repeated that his delegation would raise the matter with the Moroccan Government, drawing its attention to the interest expressed by the Committee in that delicate affair.

48. Mr. BENHIMA (Morocco) shared the satisfaction of members of the Committee at the fact that the dialogue between the Committee and representatives of the Moroccan Government had not been broken off, as some people - though not the Moroccan delegation - might at one stage have feared. The dialogue had been extremely rewarding, and his delegation was also very glad to have had an opportunity to correct some statements which were not fully accurate. In conclusion, he cordially thanked the Committee - welcoming its intregity and its desire to understand the details of different legal systems and the difficulties encountered by States parties - and reiterated the Moroccan authorities' determination to work for the establishment of a humane, just, prosperous and free society.

49. The CHAIRMAN proposed that the Committee should defer consideration of the second periodic report of Morocco to a later session (probably the forty-first or forty-second), noting that it still had to consider the questions raised in sections VII to XIV of the list of issues.

50. It was so decided.

51. The Moroccan delegation withdrew.

The public meeting rose at 4.55 p.m.